U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 8 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as a "Mathematics Teacher" for [redacted] At the time of filing, the petitioner was teaching 8th grade mathematics students at [redacted] in [redacted] Maryland. The petitioner previously worked as a teacher at [redacted] in Arizona, and at [redacted] and [redacted] in the Philippines. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest is not sufficient to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner has established that her work as a mathematics, science, and physics teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of petitioner's will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on October 31, 2011. In an October 24, 2011 letter accompanying the petition, counsel stated that the petitioner's "petition for waiver of the labor

certification is premised on her Master's Degree in Education, over twenty (20) years of dedicated and progressive teaching experience in Mathematics, the awards received by her as champion coach, recognition accorded her by peers and government agencies both in the United States of America and the Philippines, including Co-Authorship of a source book in physics which is still being used by teachers in the Philippines." Academic degrees, experience, and recognition for achievements by peers or governmental entities are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), and (F), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not imply eligibility for the additional benefit of the waiver. The petitioner's awards, work as an educator, and co-authorship will be further discussed later in this decision.

The petitioner submitted various letters of support from administrators, teachers, and students discussing her work as an educator. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

Principal, stated:

> [The petitioner] has been an excellent staff member of since joining our staff in August 2008. During her tenure, she has done an excellent job of managing her 8th grade Mathematics students, has provided consistent rigorous instruction, and often, can be found at school after hours grading papers and planning for the next instructional day.
>
> [The petitioner] would benefit tremendously to have an opportunity to remain within the United States to serve her students. She is committed to her profession and has been a tremendous asset to

Mr. comments on the petitioner's effectiveness as a mathematics teacher at but he does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her.

a former student of the petitioner, stated:

> [The petitioner] was my Algebra 2 teacher when I attended [The petitioner] has been a phenomenal Algebra teacher. She is by far the most dedicated math teacher I have ever had. These features were demonstrated when she stayed up late after a long day of school to assist me understand a few arduous algebra concepts. [The petitioner] made sure every student preformed [sic] their best by making the most difficult algebra concepts into "piece of cake" concepts.

Mr. expresses admiration for the petitioner's dedication and teaching skills, but he fails to provide specific examples of how the petitioner's work has influenced the field as a whole. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Math Department Head, stated:

> [The petitioner] has taught Math subjects, such as Geometry, Algebra 1 and 2, and College Algebra, to Grades 9 through 12 students here at
>
> [The petitioner] demonstrates an admirable level of professionalism. In the classroom, she conducts Math lessons and activities that are intellectually stimulating and fund for students to engage in. She communicates her high expectations to her students thereby challenging them to do their best. She commands authority as well as respect from her students.
>
> As a colleague, [the petitioner] is dependable. She accepts workload without hesitation. Aside from classroom assignments, she volunteers in performing other duties like tutoring for AIMS in Math, serving as a detention supervisor in our Wednesday/Saturday School, chaperoning in school dances, and assisting in district-sponsored sports events, among others.

Ms. comments on the petitioner's teaching qualities and responsibilities at but Ms. observations do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond the students at .

The petitioner's references praise her teaching abilities and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where she has worked. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

In addition to reference letters, the petitioner submitted the following:

1. A certificate for "Outstanding Teacher of the Year" from the "in recognition of her Outstanding Achievement as Secondary Mathematics and Science teacher of the (March 23, 2005);
2. A "Most Outstanding Teacher Award" from the Region 2, Division of "in grateful recognition of her exemplary performance in the delivery of basic quality education to the learners as exemplified by her sincerity, commitment and dedication to service, worthy of emulation" (April 5, 2006);

3. A Certificate of Recognition naming the petitioner "Regional Champion Coach in the Science and Technology category of the (October 30, 2001);
4. A Certificate of Recognition from the for "exemplary performance as Champion – Coach during the conduct of the SY 2005-2006 Regional Science Fair" (December 9, 2005);
5. A Certificate of Recognition from the Division of Isabela for coaching students who "garnered FIRST PLACE in the 2005 DIVISION INTEL SCIENCE FAIR Physical Science – Team Category held on October 27, 2005";
6. A Certificate of Recognition from the "for having garnered First Placer during the First Division Mathematics Camp by the Mathematics Teachers Association of the held at ' (January 15, 2006);
7. An Excellence Award "in recognition of her Outstanding Achievement as Regional Math/Science Coach and Science Club Adviser of the (September 29, 2004);
8. A Certificate of Appreciation from the for coaching "the which was adjudged 2nd Placer in the in celebration of the ' (June 30, 2004);
9. A Certificate of Participation as coach of team in the 1st (January 28, 2006);
10. A Certificate of Excellence from the principal of for the petitioner's "'Commitment to Excellence' to the students of School's Extended Learning Opportunities Program" (June 16, 2011);
11. A Certificate of Recognition from the principal of for the petitioner's "'Commitment to Excellence' to the students of Extended Learning Opportunities" program" (June 14, 2009);
12. A Certificate of Appreciation "for her valued and meritorious services as Facilitator in the conducted at (February 2003);
13. A Certificate of Recognition for efforts as Co-chairman during the planning conference for the ' ' (July 9, 2004);
14. A Certificate of Appreciation for serving as co-trainer for the "Seminar Workshop on (May 7, 2005);
15. A Certificate of Recognition from the for "support as Lecturer and Facilitator in the Regional Training Program on the Practical Approach in Teaching Math and Science" (May 11, 2004);
16. A Certificate of Merit for serving "as Lecturer during the two-day Inservice Training Workshop held at the (June 29, 2001);
17. A Certificate of Recognition from the principal of for the petitioner's "service as Math tutor" (May 20, 2008);

18. A Certificate of Accreditation from the [redacted] certifying that the petitioner is "qualified to act as ROOM EXAMINER in any [redacted] . . . within [redacted]" (April 17, 2002);
19. An award certificate for the petitioner's "performance as Presenter during the [redacted]" seminar at [redacted] (March 3, 2007);
20. A Certificate of Participation for involvement "in the [redacted]" (April 2005);
21. A Certificate of Appreciation from [redacted] for service rendered "as cooperating/critic teacher to [redacted]" a student teacher from [redacted] (February 28, 1997);
22. A Certificate of Appreciation from [redacted] for "services rendered as cooperating teacher to . . . student teachers from December 3, 2001 to February 28, 2002";
23. A Maryland Educator Certificate;
24. Arizona Department of Education Teaching Certificates;
25. A "Certification of Good Standing" from the Republic of the Philippines Professional Regulation Commission, Manila;
26. A "Report of Rating" stating that the petitioner "passed the professional board examination for teachers";
27. A "Professional Teacher" identification card from the Republic of the Philippines Professional Regulation Commission;
28. Degrees and academic transcripts;
29. Employment verifications; and
30. Certificates of Membership for the Maryland Chapter of the Association of Filipino Teachers of America.

Again, academic records, professional certifications, memberships, and recognition for achievements are all elements that pertain to a finding of exceptional ability, but exceptional ability is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the awards she received (items 1 – 22) have more than regional, local, or institutional significance. For instance, the petitioner's certificates from the Philippines Department of Education, [redacted] reflect regional recognition as an educator rather than nationally significant awards in the field of education. There is no documentary evidence showing that items 1 – 30 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted a certification from [redacted] Secondary School Principal [redacted] and [redacted] Director [redacted] stating: "This is to certify that [the

petitioner] . . . has co-authored a book entitled, duly endorsed and recognized in the Department of Education of " The petitioner also submitted a copy of the book identifying her name among its 36 coauthors. While the petitioner appears to have contributed at some level to this book, there is no documentary evidence showing that her material was utilized and adopted by schools outside of . Moreover, there is no evidence demonstrating that the petitioner's specific contribution to the text has influenced the field as whole or otherwise had a national impact.

The petitioner submitted certificates of proficiency, participation, completion, and attendance for training courses, seminars, and workshops relating to her professional development. While taking courses and attending seminars and workshops are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The director issued a request for evidence, instructing the petitioner to submit evidence to establish that the benefits of her proposed employment would be national in scope and that she "has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, the petitioner submitted a March 14, 2008 article in *The New York Times* entitled "Report Urges Changes in Teaching Math," a 2009 article in the *Wall Street Journal* entitled "The Importance Math & Science in Education," an article in the *Huffington Post* entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?," the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008), an article entitled "Supporting Science, Technology, Engineering, and Mathematics Education – Reauthorizing the Elementary and Secondary Education Act," a copy of Section 1119 of the No Child Left Behind Act (NCLBA), a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results, information about STEM (science, technology, engineering and mathematics) fields printed from the online encyclopedia *Wikipedia*, an article entitled "Effective Programs in Middle and High School Mathematics: A Best-Evidence Synthesis," and an article discussing the highlights from the Trends in International Mathematics and Science Study (2007). As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such assertions address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrates that the petitioner's specific work has influenced the field as a whole.

The petitioner submitted a July 7, 2011 news release entitled Public Schools agrees to pay $4.2 million in back wages for violations of H-1B temporary foreign worker program." The U.S. Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-

based immigrant or nonimmigrant petitions filed by This debarment means that is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218 n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent from filing a petition on her behalf.

The petitioner submitted a letter from Principal, , stating:

> This year [the petitioner] taught mathematics to our Special Education students. Her level of expertise of the subject matter and ability to provide differentiated instruction to meet the variety of students' learning styles were contributing factors to our students' scores on formative assessments increasing significantly that caused to meet proficiency in state and countywide assessments.
>
> We have already begun planning for the upcoming 2012-13 school year and expect [the petitioner] to be a part of our faculty and to be the Chair of the There is a shortage of highly qualified mathematics teachers who is [sic] effective in our Special Education department.

Ms. asserts that the petitioner contributed to her school's increased scores on state and county wide assessments, but Ms. s observations do not set the petitioner apart from other competent and qualified teachers, or explain how the petitioner's work has impacted the field beyond Ms. also points to "a shortage of highly qualified math teachers." As the employment certification process was designed to address the issue of worker shortages, a shortage of qualified workers in a given field is not a persuasive argument for demonstrating eligibility for the national interest waiver. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221.

The petitioner also submitted a letter from Grade Level Chairperson and Mathematics Teacher, stating:

> [The petitioner] is highly skilled at her job, always attending to details and expeditious in making improvements to enhance our academic environment. She is adept at using acquired knowledge with children in the classroom and other settings. She is well-liked and respected by the staff, parents and students. She is very creative, motivating, and reinforcing. She is an outstanding teacher.

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[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on September 18, 2013, copy incorporated into the record of proceeding.

> [The petitioner] enthusiastically and skillfully applies instructional mathematical strategies to meet the needs of all learners. Her thorough knowledge of her job allows her to foresee instructional situations, which allows proactive instead of reactive decisions. She is conscientious, courteous, and consistently looks for ways to improve the positive and healthy school environment. Her efforts were noted through daily instruction, peer coaching and developing instructional information sessions for parents.

Ms. comments favorably on the petitioner's teaching qualities, but Ms. does not indicate that the petitioner's impact or influence as a teacher is national in scope.

In addition, the petitioner submitted a letter from Special Education Department Chair, stating:

> [The petitioner] is a certified Physics/Math teacher. Her teaching skills within these highly desired instructional areas on the secondary level have been outstanding. As a general education and special education teacher, she has demonstrated the ability to coordinate and manage the necessary support of each student under her charge. She has shared her knowledge and insight with her students, fellow teachers and parents as she skillfully implemented the modifications and accommodations as stated within the students' IEPs [Individualized Education Programs]. Her genuine care and concern for the students is evident in the way she always solicits input and feedback from each member of the instructional team.

Mr. praises the petitioner's skills as an educator, but he fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

The petitioner's references speak admirably about her, but their comments do not establish that the benefits of her employment with are national in scope or that her past record of achievement is at a level that would demonstrate her eligibility for a national interest waiver. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N

Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The director denied the petition on September 6, 2012. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that the benefits of her work as a public school mathematics teacher "will be national in scope." The director also determined that the petitioner had failed to demonstrate that she "would specifically benefit the national interest of the United States to a substantially greater degree than a similarly qualified U.S. worker."

On appeal, counsel asserts: "The academic performance of each American student is weighed against the rest across the nation for each grade level by the United States Department of Education for the purpose of determining their competitive standing globally which crucially gauges the prospective economic condition of the United States of America." Counsel further states:

> [T]he most tangible national benefit to be derived from a 'Highly Qualified Mathematics Teacher' is recreating a society of responsible and values-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again including national security.

Counsel does not explain how the actions of one teacher would contribute significantly to nationwide social reform, economic recovery, or national security.

Counsel quotes remarks made by then-President George H.W. Bush when he signed the Immigration Act of 1990, which created the national interest waiver: "This bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas." Counsel interprets this passage to mean that Congress created the national interest waiver for educators. The Immigration Act of 1990, however, was not restricted to the creation of the waiver. It was, rather, an overhaul of the entire immigration structure, creating new employment-based immigrant classifications to replace the "third preference" and "sixth preference" classifications previously in place. "[S]cientists and engineers and educators" are all members of the professions who, under the terms dictated by Congress in the Immigration Act of 1990 (as it amended the Act), are all subject to the job offer requirement.

Counsel asserts that providing "legal immigrant status for 'Highly Qualified Mathematics Teachers' including [the petitioner] . . . will not only help improve the Mathematics Education in the country but more importantly serve as 'key to the nation's economic prosperity.'" Again, counsel does not explain how the actions of one teacher would contribute significantly to improving the national educational system or the U.S. economy. Congress could have created a blanket waiver for mathematics teachers, but did not do so. Instead, the job offer requirement applies to members of the professions (such as public school teachers) and to aliens of exceptional ability (*i.e.*, foreign national workers who show a degree of expertise significantly above that ordinarily encountered in a given field).

Counsel emphasizes "the critical timeline" and "time-sensitive obligation" for hiring "Highly Qualified Teachers,'" and claims that the labor certification process cannot accommodate this need because "[t]he United States Department of Labor minimum education requirement . . . for High School Teacher is just a bachelor's degree." Section 9101(23) of the NCLBA, 20 U.S.C. § 7801(23), defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLBA require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLBA also refers to "highly qualified" teachers who are "new to the profession." Thus, the petitioner's master's degree and more than twenty years of experience are not required for "highly qualified" status under the NCLBA. Counsel, therefore, does not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel states that "unquantifiable factors that zero in on 'passion'" distinguish the petitioner from qualified United States workers and that labor certification cannot take these factors into account, but the record contains no evidence to support the claims. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel contends that, under the NCLBA, schools that fail to meet specified benchmarks will lose federal funding and be "abolished," thereby putting teachers out of work. Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. Counsel asserts that by waiving the labor certification requirement for highly qualified teachers such as the petitioner, "more American teachers will have . . . employment opportunities" because standards will be met and schools will not be abolished. However, neither the Immigration and Nationality Act nor the NCLBA, create or imply any blanket waiver for highly qualified foreign teachers. USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

Counsel asserts: "Exclusively and strictly enforcing the rudiments behind the New York State Department of Transportation Case to Highly Qualified Teachers is unjust, unreasonable and damaging to the 'Best Interest' of the American School Children." Precedent decisions are binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel cites no statute, regulation or case law that would require or permit USCIS to disregard *NYSDOT* as it applies to school teachers. Counsel refers to presidential speeches and federal initiatives such as the NCLBA, stating that they demonstrate the "underlying urgency on this matter," but counsel identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. As previously discussed, the unsupported

assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *See NYSDOT*, 22 I&N Dec. 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.